

Appl. No. 09/660,785
Amdt. dated March 3, 2005
Amendment under 37 CFR 1.116 Expedited Procedure
Examining Group 2645

PATENT

REMARKS/ARGUMENTS

Claims 1-4, 6-14 and 16-25 were pending in this application. No claims have been amended, added or cancelled. Hence, claims 1-4, 6-14 and 16-25 remain pending. Reconsideration of the subject application as amended is respectfully requested.

Claims 1-4, 6-14 and 16-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent No. 6,259,692 to Shtivelman et al. ("Shtivelman") in view of US Patent No. 6,353,611 to Norris et al. ("Norris").

Claim Rejections Under 35 U.S.C. § 103(a)

The Applicants respectfully traverse the rejections of all claims and direct attention to 37 CFR § 1.104(d)(2), reproduced here in its entirety:

§ 1.104 NATURE OF EXAMINATION.

...

(d) *Citation of references.*

...

(2) When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

The office action, in several instances, relies on "knowledge generally available to one of ordinary skill in the art," in particular, the motivation to combine the reference teachings. The notion that the motivation is within the knowledge generally available to one of ordinary skill in the art is unsupported by documentary evidence. In other words, the rejection is based on facts within the personal knowledge of an employee of the Office. Hence, according to 37 CFR

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1.104(d)(2), the Applicants are entitled to either documentary evidence or an affidavit. The Applicants are simply not required to take the Examiner's word that something is generally known. The Examiner must support personal knowledge with an affidavit.


As stated in the last office action, the Applicants have asked for such documentary proof on a number of occasions to no avail. Hence, the Applicants renew the request for documentary proof in each case where the examiner relies on personal knowledge that the motivation is generally know. Further, the Applicants request an opportunity to respond to the documentary evidence in a non-final office action. The Applicants did not require a new grounds for rejection; the prior rejection was incomplete under USPTO regulations. Absent the required documentary proof, the Applicants believe all claims now pending are in condition for allowance.

Conclusion

In view of the foregoing, the issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,


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